HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO: 15326 of 2006

Dated: 07-11-2007

Between:

Sai Seeds Corporation,
Rep., by its Proprietor,
Karimnagar District.

..... PETIT

AND

The Commissioner,
Metpally Municipality,
Metpally,
Karimnagar District and another.

.....RESPONI

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 15326 of 2006

O R D E R:

This writ petition is filed for a writ of Mandamus to declare the inaction of respondent No.1 in taking action against the alleged construction of a wall obstructing the public street on the southern side and adjacent to land in Sy.No.796 leading to Mahalakshmamma temple within the municipal limits of Metpally town, Karimnagar District.

The petitioner claims to be the owner and possessor of the land admeasuring Ac.1.00 cents in Sy.No.796 of Metpally Municipal limits. He pleaded in his affidavit that there is a way/road adjacent to his land in Sy.No.796 towards southern side leading to Mahalakshmamma temple; that respondent No.2 has occupied the said public road and constructed a wall and that the petitioner filed representation before respondent No.1 on 09-08-2005 whereunder the fact of respondent No.2 constructing a compound wall blocking the public way was brought to the formers notice and that however, no action has been taken on the said representation.

On behalf of respondent No.1 Sri R.Somaiah filed a counter affidavit and no counter has been filed on behalf of respondent No.2. Sri Somaiah, in his affidavit, stated that his site inspection and enquiry revealed that the wall was constructed long back and he disowns the responsibility for the same. He further stated that one P.Narayana filed a civil suit i.e. O.S.No.10 of 2006 on the file of the Senior Civil Judge, Jagityal and in I.A.No.30 of 2006 in the said suit before the Senior Civil Judge, Jagityal, who granted an order of status quo on 24-01-2006 in respect of Sy.No.794 over an extent of Ac.1274 square yards. It is averred that one Sri Gangula Bhoomaiah applied for construction of compound wall around Sy.No.794 and 796, Metpally abutting NH 16 and opposite to TTD Kalyanamandapam. The Commissioner stated that unless and until the said suit is disposed of, the Municipality is not in a position to take action on the representation dated 09-08-2007 of the petitioner.

Heard Sri K.Venu Madhav, learned counsel for the petitioner and Sri P.Radha Krishna, learned standing counsel appearing for respondent No.1.

From the tenor of the counter affidavit filed by respondent No.1, the Court is unable to decipher whether he admitted that the compound wall has been constructed over the public road/pathway or not.

While the petitioner's grievance is that a wall was raised blocking the pathway adjacent to land in Sy.No.796, respondent No.1 stated in his counter affidavit that in respect of Sy.No.794 a civil suit was filed by one P.Narayana. I am unable to comprehend the relevancy of the civil suit, which on his own showing related to Sy.No.794. The Commissioner has not explained whether the alleged construction of compound wall was on Sy.No.794 or not. Similarly, I find no relevance of the alleged application filed by Sri Gangula Bhoomaiah for construction of a compound wall in Sy.No.794 and 796. The only grievance of the petitioner is that a compound wall blocking the pathway is constructed by respondent No.2 and that respondent No.1 has to ascertain whether the allegation of the petitioner is correct with reference to the master plan for Metpally Town and if so whether there is any order passed by a competent Court of law preventing him from taking steps to remove the construction illegally made. Instead of addressing this aspect, the Commissioner in my view has filed a counter affidavit with averments, which are wholly irrelevant. It is also significant to note that respondent No.2 has not filed any counter affidavit denying the allegations.

Having regard to the afore mentioned facts and circumstances, the writ petition is disposed of directing respondent No.1 to examine and decide whether a wall was constructed obstructing the public street as alleged by the petitioner and whether there is any Court proceeding by which he is prevented from taking action. If respondent No.1 is satisfied, on such examination, that the alleged wall was constructed on a public way, he shall take steps for removal of the same as expeditiously as possible and in any case not later than three months.

Subject to the above direction, the writ petition is disposed of. No costs.

C.V.NAGARJUNA RE

Date: 07-11-2007
KLP